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Presentment Date: November 21, 2011
Time: 12:00 p.m.

Objections Due: November 21, 2011
Time: 11:00 a.m.

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**MOTION TO FURTHER AMEND, SOLELY AS RELATES TO
WINDELS MARX LANE & MITTENDORF, LLP, THE ORDER PURSUANT TO
SECTION 78eee(b)(5) OF SIPA, SECTIONS 105, 330, AND 331 OF THE BANKRUPTCY
CODE, BANKRUPTCY RULE 2016(a), AND LOCAL BANKRUPTCY
RULE 2016-1 ESTABLISHING PROCEDURES GOVERNING
INTERIM MONTHLY COMPENSATION**

Irving H. Picard, as trustee (the "Trustee") for the substantively consolidated estate of
Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff"),

by and through his undersigned counsel, hereby moves (the “Motion”) the Court for entry of an order substantially in the form of Exhibit A hereto further amending, solely as it relates to Windels Marx Lane & Mittendorf, LLP (“Windels Marx”), that certain Order Pursuant to Section 78eee(b)(5) of SIPA, Sections 105, 330, and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Bankruptcy Rule 2016-1 Establishing Procedures Governing Interim Monthly Compensation of the Trustee and Baker & Hostetler LLP, as most recently amended and superseded in its entirety on June 1, 2011 (ECF No. 4125). In support of this Motion, the Trustee respectfully represents as follows:

BACKGROUND

1. On December 11, 2008 (the “Filing Date”)¹, the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York against defendants Madoff and BLMIS (together, the “Defendants”) (No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of the Debtor.

2. On December 12, 2008, The Honorable Louis L. Stanton of the District Court entered an order appointing Lee S. Richards, Esq. as receiver for the assets of BLMIS (the “Receiver”).

3. On December 15, 2008, Judge Stanton entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

- a. appointed the Trustee for the liquidation of the business of BLMIS pursuant to SIPA section 78eee(b)(3);
- b. appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and

¹ See Section 78lll(7)(B) of SIPA.

c. removed the case to this Bankruptcy Court pursuant to SIPA section 78eee(b)(4).

4. On February 25, 2009, this Court entered an Order Pursuant to Section 78eee(b)(5) of SIPA, Sections 105, 330, and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Bankruptcy Rule 2016-1 Establishing Procedures Governing Interim Monthly Compensation of the Trustee and Baker & Hostetler LLP, which order was subsequently superseded in its entirety by order dated December 17, 2009, and again superseded in its entirety by order dated June 1, 2011 (the "Second Amended Compensation Order") (ECF No. 4125), which order provides for, among other things, compensation on a monthly basis of 90% of the fees and 100% of the expenses of the Trustee and Baker & Hostetler LLP.

5. On July 16, 2009, this Court entered an Order granting the Trustee's motion to retain Windels Marx as special counsel on behalf of the consolidated estate, *nunc pro tunc* as of June 9, 2009 (ECF No. 327), finding that Windels Marx is disinterested pursuant to section 78eee(b)(6) of SIPA, section 327(a) of the Bankruptcy Code, and Bankruptcy Rule 2014(a) and is therefore in compliance with the disinterestedness requirement in section 78eee(b)(3) of SIPA, section 327(a) of the Bankruptcy Code, and Bankruptcy Rule 2014(a). As set forth in more detail below, since that time, Windels Marx has been providing legal services to the Trustee in a capacity as conflicts counsel and otherwise.

RELIEF REQUESTED

6. For the reasons set forth below, the Trustee hereby seeks the entry of an order pursuant to which the terms and procedures set forth in paragraphs 6 through 10 of the Second Amended Compensation Order shall be made applicable to Windels Marx, in its capacity as special counsel to the Trustee, in all respects, except that Windels Marx shall be paid compensation on a

quarterly, rather than monthly, basis and for 80%, rather than 90%, of its fees (i.e. a 20% holdback), beginning with the quarter commencing June 1, 2011.²

7. Accordingly, the Trustee further requests that paragraph 6(e) of the Compensation Order, which refers to monthly compensation of 90% of fees, shall not be applicable to Windels Marx, and the following provisions shall apply instead (solely with respect to Windels Marx):

“At the expiration of each 3-month period beginning June 1, 2011, the Trustee shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in Windels Marx’ Monthly Statements for such 3-month period to which no objection has been served in accordance with paragraph (d) hereof, and the Trustee shall promptly pay any amounts authorized by this Second Amended Compensation Order not previously paid to Applicants.”

8. Except as set forth above with respect to Windels Marx, the Second Amended Compensation Order shall remain unaltered in all respects.

BASIS FOR RELIEF REQUESTED

9. This Motion incorporates by reference the statutory and other predicates for relief in the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, and the applicable provisions of Section 78 of the Securities Investor Protection Act with respect to the allowance and payment of compensation and reimbursement and the procedures related thereto, as set forth in the Second Amended Compensation Order.

10. In its capacity as conflicts counsel and otherwise, Windels Marx' role in the Madoff matter has increased significantly since the time of its retention as the Trustee's special counsel in 2009. Windels Marx is currently prosecuting over 50 adversary proceedings on behalf of the Trustee. In addition, Windels Marx is handling the chapter 11 bankruptcy case of BLM Air

² Windels Marx' most recent fee application, covering the period February 1, 2011 through May 31, 2011, was approved by the Court on October 19, 2011 (ECF No. 4471). As has been the case, Windels Marx will continue to file future fee applications in coordination with the fee applications that are filed by the Trustee and his other counsel.

Charter LLC (Case No. 09-16757 (BRL)) and related adversary proceeding, in which Windels Marx has been seeking, through litigation and the sale process, to liquidate a 50% interest in what is commonly known as the Madoff private jet.

11. The relief sought herein is supported, and has been consented to, by the Securities Investor Protection Corporation (“SIPC”). Currently, Windels Marx only receives fees and expenses upon the granting of fee applications which are filed in coordination with the Trustee and all his counsel. The relief, if granted, will not alter the amount of fees or expenses that Windels Marx would otherwise receive pursuant to fee applications approved by this Court, nor does it alter the 20% holdback currently applicable to Windels Marx. Rather, this relief would solely provide Windels Marx with regular quarterly payments of fees and expenses, irrespective of the timing of the filing and granting of fee applications on behalf of the Trustee and all its professionals.

12. Given the increased level of service Windels is providing, the Trustee believes that compensation on a quarterly basis is warranted.

NOTICE

13. Notice of this Motion has been provided by email or regular U.S. Mail in accordance with Rule 2002 of the Bankruptcy Rules to all parties in interest in the BLMIS Proceedings, including: (i) SIPC; (ii) the SEC; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) all BLMIS customers; and (vi) those parties that have file a notice of appearance in this case. The Trustee submits that no other or further notice need be given.

WHEREFORE, the Trustee respectfully requests that the Court (a) enter an order substantially in the form attached hereto as Exhibit A, granting the relief requested herein; and (b) grant such other and further relief to the Trustee as the Court may deem just and proper.

Dated: New York, New York
November 9, 2011

Respectfully submitted,

/s/ David J. Sheehan
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